United States Environmental Protection Agency | Solid Waste and Emergency Response (5305W) | EPA550-B-97-001 June 1997

RCRA, Superfund & EPCRA Hotline Training Module

Introduction to:

EPCRA/SARA Title III
(EPCRA §§301-330; 40 CFR Parts 350-372)

Updated June 1997

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INTRODUCTION TO EPCRA/SARA TITLE III

CONTENTS

1. Introduction 1

2. Program Summary 3
   2.1 Government and Industry Involvement 3
   2.2 Statutory Overview 5
   2.3 New Developments 8

1. INTRODUCTION

Congress' passage of Title III of the Superfund Amendments and Reauthorization Act (SARA), also known as the Emergency Planning and Community Right-to-Know Act (EPCRA), was the culmination of a series of social and political events that focused attention on the potential for chemical accidents and their impact on human health and the environment. Since World War II, the United States has experienced an incredible proliferation of new and diverse industries. Related to this growth is the development and use of new chemicals. Historically, chemical use has preceded knowledge of the impacts of chemicals on human health, the environment, and communites. Concern about these issues began in the 1960s. In 1962, Rachel Carson published a book entitled Silent Spring, describing the impact of DDT use on the environment. The book is often referred to as a benchmark in the movement to learn about and address the risks of chemical use. During the 1970s and 1980s, a series of environmental laws created programs to address pollution released into the environment such as the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act. Regulations began to address the most obvious (i.e., visible) problems, such as water pollution, and steadily moved toward the less obvious effects of chemical usage (e.g., slow-acting carcinogens). As pollution control and cleanup programs were put in place, the focus began to shift toward other chemical use issues. The public began to question the safety of operations and materials at industrial facilities. This slow shift in public attention was galvanized by two industrial accidents involving chemicals, one in India and another in West Virginia. These events, together with a growing body of knowledge about chemical use and risks, spurred Congress to enact, and EPA to implement, SARA Title III. This module provides a brief introduction to the history and underlying concepts of the SARA Title III program.

When you have completed this module you will be able to explain the major events that led to EPCRA's passage and the overall goals of the law. Specifically, you will be able to:

- Describe the Chemical Emergency Preparedness Program prior to the passage of SARA Title III
- Understand the different aspects of emergency planning, including: prevention, preparedness, and response
- Explain how SARA Title III is different from other environmental laws and regulations.

Use this list of objectives to check your knowledge of this topic after you complete the training session.

2. REGULATORY SUMMARY

SARA Title III created a program with two goals: to facilitate and promote planning for chemical emergencies at the state and local levels, and to provide information to the public about the chemicals used, stored, and released in their communities. To implement these two goals, EPCRA established a network of entities at the local, state, and federal level, and set requirements for gathering the needed information. This module provides an historical perspective on the legislation and an introduction to the basic provisions of the Act, which are found at 40 CFR Parts 350 through 372.

When reading EPA documents, Federal Registers, and your training materials, and when talking to callers, please remember that SARA Title III and EPCRA are synonymous and may be used interchangeably.

2.1 GOVERNMENT AND INDUSTRY INVOLVEMENT

While SARA Title III was the first mandatory governmental program requiring chemical emergency planning at the state and local level, the federal government and industry had addressed the issue prior to 1986. Congress passed several laws regulating the use and disposal of harmful chemicals, and some agencies instituted programs protecting worker and other people in frequent contact with dangerous substances. Many states and local jurisdictions also developed requirements and programs to regulate chemical use. In addition, industry developed some voluntary programs providing information to employees and the community concerning the chemicals used at facilities.

FEDERAL GOVERNMENT INVOLVEMENT

The federal government has a long history of regulating specific aspects of hazardous chemical use. For example, the U.S. Department of Transportation regulates the marking, handling, packaging, and shipping of over 30,000 hazardous materials, and the Food and Drug Administration regulates and approves the use of food additives and commercial drugs to protect against harm from chemical ingestion. Perhaps the most extensive chemical regulatory program implemented before SARA Title III is the Occupational Safety and Health Administration's Hazard Communication Standard (HCS). The Occupational Safety and Health Administration (OSHA) regulates worker safety issues, and with the promulgation of the HCS in 1983, began the first mandatory program in chemical right-to-know and emergency planning for workers. The program requires chemical manufacturers, importers, and distributors to evaluate their chemicals and determine if they pose health or physical hazards. The standard also requires manufacturers to develop a Hazard Communication Program that informs workers about the hazards of chemical use and provides training on the handling of harmful

chemicals. Originally the HCS program was limited to manufacturing facilities, but it was later extended to non-manufacturers and the construction industry.

The federal government has also been active in preparing for, and responding to, spills and other releases involving oil and hazardous substances. In 1968, the federal government adopted the National Contingency Plan (NCP) to coordinate federal agency resources in the event that an oil or hazardous substance incident exceeded the capabilities of local or regional responders. The NCP established the National Response Team and Regional Response Teams to provide assistance in the event of an accident. Originally, the NCP only applied when oil or hazardous substances were released to bodies of water covered by the Clean Water Act. The scope of the NCP was expanded to include releases to all environmental media in 1980, when Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA addresses threats to human health and the environment posed by releases or potential releases of hazardous substances from abandoned or uncontrolled sites. CERCLA and the NCP together set up procedures for federal authorities to respond to chemical accidents. The next logical step was to involve state and local agencies in preparing for and responding to releases of hazardous chemicals, hence the passage of SARA Title III.

Two incidents in particular heightened public awareness of chemical accidents and precipitated a new phase in chemical emergency preparedness, prevention, and response planning. In 1984, a release of methyl isocyanate from a Union Carbide chemical plant in Bhopal, India, killed over 2,500 people. In 1985, there was a dangerous release of aldicarb oxime and other harmful chemicals from another Union Carbide facility in Institute, West Virginia. As a result, EPA established the Chemical Emergency Preparedness Program (CEPP). This program was a voluntary effort to improve planning and response capabilities at the state and local levels. EPA initiated CEPP to implement accidental release provisions and to determine and develop appropriate prevention initiatives to aid communities trying to implement chemical awareness programs. EPA prepared the Chemical Emergency Preparedness Program Interim Guidance (also known as "The Blue Book") to assist local communities in identifying acutely toxic chemicals and preparing for accidental releases of such chemicals. In addition to developing the list of acutely toxic chemicals, this document provided methods for gathering data and analyzing the extent of chemical usage in an area, encouraged facilities to make public certain information about hazardous chemicals that they use, and provided information on the development of contingency plans for communities. CEPP did not rely on any explicit statutory authority, but on EPA's general mandate to protect human health and the environment, giving EPA no direct power to enforce the program.

INDUSTRY INITIATIVES

Knowing that regulations to mitigate risk were just around the corner, some large chemical companies used their knowledge about chemical safety to begin implementing preparedness and response programs, most notably through the

Chemical Manufacturers Association's (CMA) Chemical Awareness and Emergency Response (CAER) program. This program encouraged a closer working relationship between facilities and surrounding communities. While development of these programs helped create useful tools and identify problems, the lack of mandatory emergency planning programs and information collection meant that data from industries were sometimes incomplete, inaccurate, or unavailable.

CONGRESSIONAL ACTION

Without enforcement mechanisms in CEPP, there was no assurance that industry would continue to provide information after the initial impact of the Bhopal incident subsided. Building on the groundwork laid by CEPP, Congress enacted EPCRA in 1986 as Title III of SARA. SARA Title III, which mandated many elements of CEPP, established a chemical emergency response planning infrastructure at the state and local levels. Congress gave EPA the authority to build on the policies, analyses, and guidance used in implementing CEPP. EPCRA includes community right-to-know and emergency preparedness provisions that are complementary to, and consistent with CEPP, but added specific enforcement provisions. In passing EPCRA, Congress acted on the belief that the information facilities must provide about chemicals and chemical releases would lead to a reduction of hazards. Congress hoped to encourage communication between industry and the surrounding community by heightening industry's awareness of safety and by assisting the public in understanding chemical risks. Through EPCRA, Congress also ensured that various federal agencies would work together in planning and response efforts.

2.2 STATUTORY OVERVIEW

SARA Title III has two distinct goals: to encourage and support emergency planning for responding to chemical accidents, and to provide local governments and the public with information about possible chemical hazards in their communities. The statute sets up a framework for emergency planning at the state and local levels, and provides the authority to collect the chemical information important to communities. Table 1 presents the statute's individual sections and topics.

Table 1
CONTENTS OF EPCRA

Subtitle A	
§301	Establishment of State Emergency Response Commissions (SERCs), Planning Districts, and Local Emergency Planning Committees (LEPCs)
§302	Substances and facilities covered; notification
§303	Comprehensive emergency response plans
§304	Emergency release notification
§305	Emergency training and review of emergency systems
Subtitle B	
§311	Material Safety Data Sheets
§312	Emergency and Hazardous Chemical Inventory Forms
§313	Toxics Release Inventory (TRI)
Subtitle C	
§321	Relationship to other laws
§322	Trade secrets
§323	Provision of information to health professionals, doctors, and nurses
§324	Public availability of plans, data sheets, forms, and follow-up notices
§325	Enforcement
§326	Civil actions
§327	Transportation exemption
§328	Regulations
§329	Definitions
§330	Authorization of appropriations

EMERGENCY PLANNING

EPCRA's emergency planning provisions are designed to promote the discovery and mitigation of risks associated with chemical use. To reduce risks, EPA encourages prevention, preparedness, and quick response to chemical emergencies. If properly executed, these three measures can make the difference between disaster and slight inconvenience. Prevention involves identifying the causes of, and reducing the potential for, chemical accidents to occur. Proper safety measures, sound management practices, and preventive maintenance all reduce the potential for chemical accidents. No chemical safety management program can be guaranteed 100 percent effective. Preparedness, the second component of emergency planning, anticipates an accident despite prevention measures. Emergency preparedness plans help facilities and local and state governments respond to accidents quickly and efficiently. These plans outline the procedures a facility and the community should follow in responding to a release. The final measure concerns response actions. When accidents occur, it is imperative that the various players in the response process know their roles and use their resources wisely. The planning process has a greater impact than the plan itself, encouraging awareness, communication, and coordination of efforts.

COMMUNITY RIGHT-TO-KNOW

In addition to the emergency planning provisions developed under CEPP, the community right-to-know provisions of SARA Title III provide a data-gathering process to increase awareness of chemical risks in the community. These provisions give citizens access to information concerning the inventories and annual releases of hazardous and toxic chemicals into the environment, as well as access to information on source reduction activities used by facilities in their communities to control these releases. If facilities store hazardous chemicals above specified thresholds, information concerning chemical amounts, contingency plans, and notification is available to the public. EPA encourages citizens, government entities, and facilities to use these data to establish a chemical profile of their community and to initiate and direct pollution prevention activities and risk reduction analyses. Pollution prevention avoids the creation of waste, as opposed to pollution control, which concentrates on managing and disposing of waste.

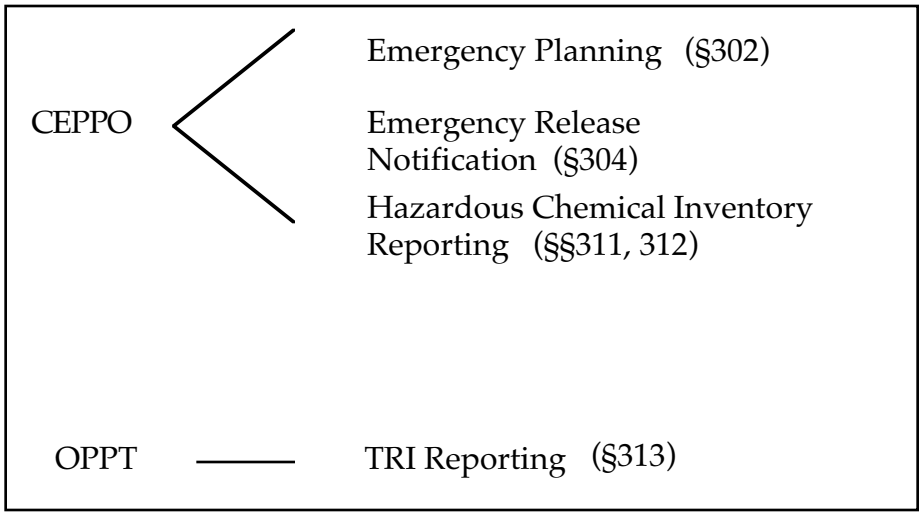
UNIQUE ASPECTS OF EPCRA

SARA Title III is significantly different from many other environmental laws, such as the Clean Air Act and the Clean Water Act, which set regulatory standards to control the activities of a specified regulated community. These statutes are restrictive, requiring regulated facilities to refrain from certain activities and perform other activities, and punishing non-compliance under extensive enforcement provisions. Title III uses a different regulatory model because its goals are different. The statute's intent is to provide information about chemicals to the government and the community, and only prescribes behavior to the extent that regulated facilities must submit information to the government, with punitive measures for non-compliance. For example, EPA uses enforcement tools, such as Supplemental Environmental Projects (SEPs), in EPCRA enforcement decisions. SEPs are projects that emphasize pollution prevention and waste minimization and are often used in conjunction with reduced fines. SEPs typically require projects that remediate the adverse public health or environmental consequences associated with a particular violation. EPA encourages state and local governments to expand emergency planning requirements by creating laws tailored to their own states and localities to complement the federal requirements mandated by EPCRA.

As stated earlier, EPCRA gives the public unprecedented access to information regarding storage and releases of potentially dangerous chemicals. For example, data collected under EPCRA show that over 22,000 facilities have collectively reduced their releases of toxic chemicals by 1.56 billion pounds, a decline of 44.1% since 1988. Such information allows industry to identify and reduce costs associated with toxic waste and to evaluate pollution prevention efforts. Federal, state, and local governments have also used the information to evaluate existing environmental programs, track pollution control, and identify potential areas of concern.

ORGANIZATION

The two aspects of EPCRA are implemented by different offices within EPA. The Chemical Emergency Preparedness and Prevention Office (CEPPO) carries out the emergency planning, emergency response notification, and inventory reporting provisions of the law. The Office of Pollution Prevention and Toxics (OPPT) implements the Toxics Release Inventory (TRI) aspects of EPCRA. Responsibility for the four main elements of the EPCRA program is apportioned within EPA as follows:



CEPPO is part of the Office of Solid Waste and Emergency Response. Its mission is to help local and state authorities assemble the necessary chemical information for chemical emergency prevention, preparedness, and response activities. OPPT is within the Office of Prevention, Pesticides, and Toxic Substances. The branches of OPPT that are primarily associated with the Hotline are the Toxics Release Inventory Branch (TRIB) and the TRI Information Management Branch (TRI-IMB). Both CEPPO and OPPT administer right-to-know components of the program.

2.3 NEW DEVELOPMENTS

Since SARA Title III's inception in 1986, other laws have augmented the provisions laid out in EPCRA. The Pollution Prevention Act of 1990 broadened the TRI aspects of Title III. Regulated facilities are now required to report source reduction and recycling activities, as well as treatment and disposal activities. Under the Clean Air Act Amendments of 1990, some facilities will be required to create risk management plans (RMPs). These RMPs will expand upon EPCRA's local and state level emergency planning provisions.

The EPCRA program is continuing to develop and expand, building on the reporting requirements and relationships now established. Both CEPPO and OPPT have broadened the programs originally created in the late 1980s. For example, CEPPO has begun to address issues within EPCRA §§302-312 that require further clarification to facilitate the implementation of these sections nationwide. CEPPO is currently writing a proposed rule predicted to discuss the revision of the EPCRA §312 Tier II Form and to develop an information retention policy for data collected under EPCRA §§302-312.

Like CEPPO, OPPT has its own agenda, which includes expanding the TRI program. On November 30, 1994 (59 FR 61432), the Agency added 286 chemicals and chemical categories, which include 39 chemicals as part of two delineated categories, to the list of toxic chemicals subject to reporting under EPCRA §313 . Along with the TRI expansion initiative, OPPT also published a rule that established an alternate threshold for those facilities that meet EPCRA §313 reporting requirements, but have a low annual reportable amount of toxic chemicals (59 FR 61488; November 30, 1994). The alternate threshold is an attempt to lessen the reporting burden on small businesses that do not release large amounts of toxic chemicals. This chemical list expansion represents only the first phase of OPPT's plan to widen the scope of the TRI program.

The second phase of the expansion effort includes expanding the types of facilities subject to TRI reporting requirements. The addition of facilities in certain industry sectors was proposed in the Spring of 1996, and published in the Federal Register on June 27, 1996 (61 FR 33588). In the third phase of the TRI expansion initiative, EPA seeks to increase the information available to the public on chemical use. An October 1, 1996, Advanced Notice of Proposed Rulemaking (61 FR 51322) announced EPA's intent to collect chemical use information, otherwise known as materials accounting data, which is an inventory method that tracks chemical inputs and outputs on a facility-wide basis. EPA believes that this information will provide a more detailed and comprehensive picture to the public about environmental performance and about toxic chemicals in communities.

In addition to the development of the EPCRA programs nationally, other countries and international agencies have used EPCRA's programs as models elsewhere. For example, the United Nation's Organization for Economic Co-operation and Development is promoting a chemical accident prevention, preparedness, and response program, and Canada has implemented its own version of the TRI.